

1                                    AGREEMENT ON WATER QUANTITIES

2                    9. (a) During the term of this Settlement Contract and any renewals thereof:

3                                    (1) It shall constitute full agreement as between the United States and the  
4 Contractor as to the quantities of water and the allocation thereof between Base Supply  
5 and Project Water which may be diverted by the Contractor from ~~the Sacramento River~~  
6 its Source of Supply for beneficial use on the land shown on Exhibit B which said  
7 diversion, use, and allocation shall not be disturbed so long as the Contractor shall fulfill  
8 all of its obligations hereunder;

9                                    (2) Neither party shall claim any right against the other in conflict with  
10 the provisions of Article 9(a)(1) hereof.

11                                    (b) Nothing herein contained is intended to or does limit rights of the  
12 Contractor against others than the United States or of the United States against any  
13 person other than the Contractor: Provided, however, that in the event the Contractor, the  
14 United States, or any other person shall become a party to a general adjudication of rights  
15 to the use of water of the Sacramento River system, this Settlement Contract shall not  
16 jeopardize the rights or position of either party hereto or of any other person and the  
17 rights of all such persons in respect to the use of such water shall be determined in such  
18 proceedings the same as if this Settlement Contract had not been entered into, and if final  
19 judgment in any such general adjudication shall determine that the rights of the parties  
20 hereto are different from the rights as assumed herein, the parties shall negotiate an  
21 amendment to give effect to such judgment. In the event the parties are unable to agree  
22 on an appropriate amendment they shall, within 60 days of determining that there is an  
23 impasse, employ the services of a neutral mediator, experienced in resolving water rights

1 disputes, to assist in resolving the impasse. The cost of the mediation will be shared  
2 equally. A failure to reach agreement on an amendment within 60 days of the end of  
3 mediation will cause the immediate termination of this Settlement Contract. ~~Provided,~~  
4 ~~further, that if the California State Water Resources Control Board or a court of~~  
5 ~~competent jurisdiction issues a decision modifying the terms and conditions of the water~~  
6 ~~rights of either party to this Settlement Contract, the Contractor and the United States~~  
7 ~~shall promptly meet to determine whether or not to modify any of the terms of this~~  
8 ~~Settlement Contract to comply with such final decision. If within 60 days of the date of~~  
9 ~~the issuance of such final decision the parties are not able to reach agreement regarding~~  
10 ~~either the need to modify this Settlement Contract or the manner in which this Settlement~~  
11 ~~Contract is to be modified, the parties shall promptly retain a neutral mediator,~~  
12 ~~experienced in resolving water rights disputes, to assist the parties in resolving their~~  
13 ~~dispute. The cost of the mediator shall be shared equally. In the event that either of the~~  
14 ~~parties to this Settlement Contract determines that the parties will not be able to develop~~  
15 ~~mutually agreeable modification(s) to this Settlement Contract even with the assistance~~  
16 ~~of a mediator, either of the parties to this Settlement Contract may attempt to resolve the~~  
17 ~~impasse by seeking appropriate judicial relief including, but not limited to filing a general~~  
18 ~~adjudication of the rights to the use of water in the Sacramento River system, or may~~  
19 ~~provide notice to the other party of that party's intent to terminate this Settlement~~  
20 ~~Contract effective the following October 31<sup>st</sup>, if said notice is given during the period~~  
21 ~~April 1 through August 31, or 60 days from the date the notice is given between~~  
22 ~~September 1 and March 31; Provided, further That the immediately preceding proviso~~  
23 ~~shall not apply if a final decision of the California State Water Resources Control Board~~

1 ~~or a court of competent jurisdiction requires the United States to continue to implement~~  
2 ~~the State Water Resources Control Board's Revised Water Right Decision 1641, dated~~  
3 ~~March 15, 2000 or its associated 1995 Water Quality Control Plan, as they are currently~~  
4 ~~written.~~

5 (c) In the event that the California State Water Resources Board or a court of  
6 competent jurisdiction issues a final decision or order modifying the terms and conditions  
7 of the water rights of either party to this Settlement Contract in order to impose Bay-  
8 Delta water quality obligations, the Contractor and the United States shall promptly meet  
9 to determine whether or not to modify any of the terms of this Settlement Contract to  
10 comply with the final decision or order. If within 60 days of the date of the issuance of  
11 the final decision or order the parties are not able to reach agreement regarding either the  
12 need to modify this Settlement Contract or the manner in which this Settlement Contract  
13 is to be modified, the parties shall promptly retain a neutral mediator, experienced in  
14 resolving water right disputes, to assist the parties in resolving their dispute. The cost of  
15 the mediator shall be shared equally. In the event that either of the parties to this  
16 Settlement Contract determines that the parties will not be able to develop mutually-  
17 agreeable modification(s) to this Settlement Contract even with the assistance of a  
18 mediator, either of the parties to this Settlement Contract may attempt to resolve the  
19 impasse by seeking appropriate judicial relief including, but not limited to, filing a  
20 general adjudication of the rights to the use of water in the Sacramento River system.  
21 The foregoing provisions of this sub-article shall only apply to the incremental  
22 obligations contained within a final decision or order of the State Water Resources  
23 Control Board that reflects a modification to the obligations imposed in State Water

Resources Control Board Revised Water Rights Decision 1641 dated March 15, 2000,  
and its associated 1995 Water Quality Control Plan which, taken together, will be  
considered the baseline for the application of the provisions of this sub-article. In the  
event of an adjustment to the Contractor's Base Supply pursuant to this sub-article, the  
Contracting Officer will not assess any charge for the rescheduling of Base Supply as  
would otherwise be required under the provisions of Article 3(c) of this Settlement  
Contract.

(ed) In the event this Settlement Contract terminates, the rights of the parties to thereafter divert and use water shall exist as if this Settlement Contract had not been entered into; and the fact that as a compromise settlement of a controversy as to the respective rights of the parties to divert and use water and the yield of such rights during the term hereof, this Settlement Contract places a limit on the Contract Total to be diverted annually by the Contractor during the Settlement Contract term and segregates it into Base Supply and Project Water shall not jeopardize the rights or position of either party with respect to its water rights or the yield thereof at all times after the Settlement Contract terminates. It is further agreed that the Contractor at all times will first use water to the use of which it is entitled by virtue of its own water rights, and neither the provisions of this Settlement Contract, action taken thereunder, nor payments made thereunder to the United States by the Contractor shall be construed as an admission that any part of the water used by the Contractor during the term of this Settlement Contract was in fact water to which it would not have been entitled under water rights owned by it nor shall receipt of payments thereunder by the United States from the Contractor be construed as an admission that any part of the water used by the Contractor during the

1 term of this Settlement Contract was in fact water to which it would have been entitled  
2 under water rights owned by it.

3

4